

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**P.C., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL  
CENTER, East Orange, NJ, Employer**

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**Docket No. 16-1226  
Issued: March 23, 2017**

*Appearances:*

*Thomas R. Uliase, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On May 23, 2016 appellant, through counsel, filed a timely appeal from a February 2, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUES**

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits as of August 23, 2015; (2) whether appellant has established continuing disability caused by residuals of her accepted lumbar condition following the termination of compensation benefits on August 23, 2015; and (3) whether appellant established a psychiatric condition causally related to the July 19, 2001 employment injury.

## **FACTUAL HISTORY**

On July 19, 2001 appellant, then a 55-year-old nurse, injured her lower back while pushing a patient in a wheelchair. She filed a traumatic injury claim (Form CA-1) on July 24, 2001, which OWCP accepted for lumbar radiculitis. Appellant stopped work on July 19, 2001. OWCP commenced payment for total disability and she was placed on the periodic rolls on January 8, 2002.

In a September 23, 2006 report, Dr. Emmanuel Hriso, Board-certified in psychiatry and neurology, advised that he had been treating appellant for depression, anxiety, and insomnia since February 26, 2003. He reported that these conditions were aggravated by multiple injuries appellant had sustained while working as a nurse for the employing establishment. Dr. Hriso reiterated on July 19, 2001 that appellant had aggravated her back condition while pushing a patient in a wheelchair. He advised that this injury caused her to become disabled. Dr. Hriso reported that she has not been able to work since that date.

In his medical report, Dr. Hriso reported that appellant was in acute psychiatric distress, noting that she had complaints of depressed mood, tearfulness, anxiety, panic attacks, feelings of worthlessness, poor self-esteem, insomnia, and musculoskeletal pain involving her lower back and knees, which made it difficult for her to walk. He noted that she denied any psychiatric history or treatment prior to her July 2001 injury. Dr. Hriso advised that appellant had major depression secondary to her disabled state, resulting from her multiple work injuries sustained at work. He opined that she was having a difficult time adjusting to her disabled state after having years of productive activity as a nurse which had caused self-esteem issues, feelings of worthlessness, and had further aggravated her depressed condition. Dr. Hriso reported that, although her acute depression and anxiety symptoms improved with treatment, appellant continued to experience chronic sadness and depression, as well as anxiety attacks.

Dr. Hriso diagnosed major depressive disorder, panic disorder, anxiety disorder, and dysthymic disorder. He opined that her psychiatric conditions involving chronic depression and anxiety were directly related to her work injuries, which caused significant physical limitations in her ability to function. Dr. Hriso advised that she was chronically disabled and unable to resume any gainful employment.

In a letter dated October 30, 2006, received by OWCP on November 3, 2006, appellant's counsel requested that OWCP expand the claim to accept the psychiatric conditions diagnosed by Dr. Hriso in his September 23, 2006 report.

In a June 19, 2014 report appellant's treating physician, Dr. Laura E. Ross, an osteopath Board-certified in orthopedic surgery, noted that she was treating appellant for her lower back pain and lower extremity radiculopathy. She noted that appellant also had complaints of neck pain and had become depressed. Dr. Ross reported no new neurologic findings of the upper extremities, but advised that she had tenderness along the paracervical musculature. She noted that appellant was experiencing cervical, thoracic, and lumbar pain and had a history of cervical and lumbar disc protrusions with bilateral L5 radiculopathies. Dr. Ross advised that appellant was not working, was unable to perform the job she held at the time of her injury, and opined that her prognosis is poor. She recommended that appellant continue with her treatment plan and home exercises and return for treatment as needed.

In order to determine appellant's current condition and ascertain whether she had continuing residuals from her accepted lumbar radiculitis condition, OWCP referred her for a second opinion examination with Dr. Willie E. Thompson, a Board-certified orthopedic surgeon. In an August 15, 2014 report, Dr. Thompson noted that appellant underwent electromyogram (EMG) testing and nerve conduction velocity (NCV) studies of the lower extremities on December 18, 2003, the results of which were within normal limits. He advised that she suffered a soft tissue sprain/strain to her lower back on July 19, 2001, and opined that there was no objective evidence indicating that she suffered anything more serious than a soft tissue sprain to her lower back. Dr. Thompson noted that he was unable to adequately assess appellant's condition because of her lack of appropriate participation in the examination and that his opinion was based primarily on his review of the medical records. He advised that he was unable to opine, with any degree of medical certainty, whether appellant had residuals of the 2001 work injury or whether she was restricted from a return to gainful employment due to her lack of participation in the examination process. OWCP requested clarification from Dr. Thompson.

In a November 12, 2014 supplemental report, Dr. Thompson advised that, based on review of the medical records and his examination of appellant, she sustained no more than a soft tissue injury to her lower back. He noted that the natural progression of these types of injuries was for them to resolve within a brief period of time without residuals unless there were complications, of which there were none in this case. Dr. Thompson reported that there were no objective findings and no evidence to support assignment of physical limitations. He advised that appellant had recovered from the July 19, 2001 work injury, that she could safely return to work without restrictions, and that she had no need for any further medical treatment.

OWCP found that there was a conflict in the medical evidence between Dr. Ross and Dr. Thompson as to whether appellant continued to have residuals from her accepted lumbar radiculitis condition. It therefore referred her to Dr. Lance Yarus, an osteopath, for a referee medical examination. Dr. Yarus was provided a statement of accepted facts, the medical evidence of record, and a set of questions regarding appellant's injury and ongoing disability status. In a February 9, 2015 report, he found that appellant had fully recovered from her accepted lumbar radiculitis condition and advised that she had no residuals from the July 19, 2001 employment injury. Dr. Yarus further found that there were no diagnoses in addition to those already accepted in regard to the July 19, 2001 work injury. He concurred with Dr. Thompson that medical evidence failed to support a finding that she sustained anything more than a strain/sprain of the lumbar spine with neuritis. Dr. Yarus agreed with Dr. Thompson that appellant had recovered from the July 19, 2001 employment injury and had no limitations or

restrictions with regard to the July 2001 work injury, which had fully resolved. He concluded that she did not require any further medical treatment for her lower back.

In an April 27, 2015 report, Dr. Ross advised that appellant continued to experience pain and muscle spasms in her lower back and still had decreased sensation along the L5 and S1 distributions bilaterally. She reported that appellant should continue to stay off work, was unable to perform her date-of-injury job, and had a poor prognosis.

On March 18, 2015 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits. It found that the weight of the medical evidence, as represented by Dr. Yarus' impartial opinion, established that her accepted lumbar radiculitis condition had ceased and that she had no work-related residuals stemming from this condition.

In a June 11, 2015 report, Dr. Ross advised that appellant continued to experience pain in her lumbar spine, which was injured in the July 19, 2001 employment injury. She reported that appellant was currently not working. Dr. Ross noted continued muscle spasms and limited range of motion in the lumbar spine, but had no new neurovascular findings. She noted that appellant had undergone a lumbar magnetic resonance imaging (MRI) scan which showed multilevel disc degeneration and a herniated nucleus pulposus at the L5-S1 level. Dr. Ross opined that the recommended treatment for these findings was medically necessary and causally related to the July 19, 2001 work injury.

By decision dated July 27, 2015, OWCP terminated appellant's wage-loss compensation and medical benefits effective August 23, 2015, finding that Dr. Yarus' impartial opinion represented the weight of the medical evidence.

By letter dated August 5, 2015, counsel requested an oral hearing, which was held on November 13, 2015. At the hearing, appellant stated that she began treatment for depression with Dr. Hriso in 2003, as she had become depressed, anxious, and had insomnia due to the effects of her July 19, 2001 lower back work injury. She reported that Dr. Hriso prescribed Xanax for her condition. Counsel stated at hearing that he had been trying to have OWCP accept a psychological condition causally related to the July 2001 work injury and that he had requested that OWCP expand its accepted conditions to include a psychological condition as early as November 3, 2006. He noted that Dr. Hriso had submitted a report dated September 23, 2006 in which he opined that there was a causal relationship between appellant's psychiatric condition and her work injuries.

In support of her claim for a consequential psychiatric claim, appellant submitted a December 1, 2015 report from Dr. Hriso. Dr. Hriso reiterated that he had been treating appellant for depression, anxiety, and insomnia since February 26, 2003 and that these conditions had been aggravated for multiple reasons while working as a nurse with the employing establishment. He noted that appellant was in acute psychiatric distress. Appellant related complaints of depressed mood, tearfulness, anxiety, panic attacks, feeling of worthlessness, poor self-esteem, insomnia, and musculoskeletal pain involving her lower back and knees which caused difficulties with her ambulation. Dr. Hriso advised that appellant denied any psychiatric history or treatment prior to her July 2001 injury.

In that report Dr. Hriso diagnosed major depression secondary to appellant's disabled state which stemmed from her multiple work-related injuries. He noted that she was having a very difficult time adjusting to her disabled state after having many productive years as a nurse and this caused self-esteem problems and feelings of worthlessness which further aggravated her depressed condition. Dr. Hriso prescribed medication beginning in 2012. He noted that, although her acute depressive and anxiety symptoms improved with treatment, she continued to experience chronic sadness, depression, and anxiety attacks. Dr. Hriso diagnosed major depressive disorder, panic disorder, anxiety disorder and dysthymic disorder without evidence of personality disorders.

Dr. Hriso further related that appellant's history of multiple, work-related injuries involving her back, knees, and foot affected her daily functioning, ambulation, and caused chronic pain, with resulting depression and anxiety. He opined that her psychiatric conditions of chronic depression and anxiety were directly related to her work injuries, which caused significant physical limitation in her functioning as well as an overall change in her activities of daily living. Dr. Hriso advised that her conditions were permanent and her prognosis for a return to her previous level of functioning was extremely poor. He concluded that appellant was chronically disabled, both physically and psychiatrically, and would not be able to resume any form of gainful employment, especially as a nurse. Dr. Hriso reported that she was unable to work due to her psychiatric condition and required continued psychiatric treatment in the form of antidepressant medications, anxiolytics, and supportive psychotherapy.

By decision dated February 2, 2016, an OWCP hearing representative affirmed the July 27, 2015 termination decision. He found that the weight of the medical evidence, as represented by Dr. Yarus' impartial opinion, indicated that her accepted lumbar radiculitis condition had resolved without residuals. In addition, the hearing representative denied appellant's request to expand the claim to include a psychiatric condition, finding that Dr. Hriso's opinion was insufficient to meet his burden to establish that this condition was causally related to the July 19, 2001 work injury.

### **LEGAL PRECEDENT -- ISSUE 1**

Under FECA once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>3</sup> After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>4</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, OWCP must

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<sup>3</sup> *Gewin C. Hawkins*, 52 ECAB 242, 243 (2001); *Alice J. Tysinger*, 51 ECAB 638, 645 (2000).

<sup>4</sup> *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

<sup>5</sup> *See Del K. Rykert*, 40 ECAB 284 (1988). *L.J.*, Docket No. 14-1682 (December 11, 2015).

establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.<sup>6</sup>

Section 8123(a) provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee the Secretary shall appoint a third physician who shall make an examination.<sup>7</sup> It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP met its burden of proof to justify termination of appellant's wage-loss compensation and medical benefits. Following a finding of a conflict in medical opinions between Dr. Ross for appellant and Dr. Thompson for OWCP, a referee opinion was properly obtained to resolve the conflict.

In a February 9, 2015 report, Dr. Yarus opined that appellant had fully recovered from her accepted lumbar radiculitis condition and that she had no limitations or restrictions with regard to the July 2001 work injury, which had fully resolved. He determined that she did not require any further medical treatment for her lower back and that she had no residuals from the July 19, 2001 employment injury. Dr. Yarus further determined that there were no diagnoses stemming from the July 19, 2001 work injury beyond to those already accepted. OWCP is found to have properly relied on Dr. Yarus' opinion in its July 27, 2015 decision, finding that appellant had no residual disability causally related to her accepted lumbar radiculitis condition.

The Board finds that Dr. Yarus' impartial opinion established that appellant no longer had any residuals from her accepted lumbar radiculitis condition. Dr. Yarus' opinion is sufficiently probative, rationalized, and based upon a proper factual background. Therefore, OWCP properly accorded Dr. Yarus' opinion the special weight of an impartial medical examiner.<sup>9</sup> While appellant had submitted additional medical evidence from Dr. Ross following the impartial medical examiner's report of Dr. Yarus, her reports merely describe ongoing physical complaints. As Dr. Ross was on one side of the conflict, these new reports are insufficient to overcome the special weight afforded to Dr. Yarus.

The Board therefore finds that Dr. Yarus' opinion constituted the weight of medical opinion and supports OWCP's July 27, 2015 decision to deny any entitlement to continuing compensation based on her accepted condition.

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<sup>6</sup> *Id.*; *Leonard M. Burger*, 51 ECAB 369 (2000).

<sup>7</sup> *Regina T. Pellecchia*, 53 ECAB 155 (2001).

<sup>8</sup> *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

<sup>9</sup> *Gary R. Seiber*, 46 ECAB 215 (1994).

On appeal, counsel argues that Dr. Yarus' opinion did not warrant the special weight of an impartial medical examiner and contends that his February 9, 2015 report was not a sufficient basis on which to find that appellant was no longer disabled from the July 19, 2001 injury because he did not evaluate whether appellant had recovered from his claimed psychiatric condition, which counsel contends was causally related to the July 19, 2001 injury. He further contends that Dr. Yarus' report was not sufficiently rationalized to merit the weight of an impartial medical examiner. The Board finds that Dr. Yarus is entitled to the special weight and is a sufficient basis to support OWCP's termination of wage-loss and medical benefits.

### **LEGAL PRECEDENT -- ISSUE 2**

Following a proper termination of compensation benefits, the burden of proof shifts to the claimant to establish continuing employment-related disability.<sup>10</sup> To establish causal relationship between the condition, any attendant disability, and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.<sup>11</sup> Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>12</sup> To prevail, the claimant must establish by the weight of the reliable, probative, and substantial evidence that she had an employment-related disability which continued after termination of compensation benefits.<sup>13</sup>

### **ANALYSIS -- ISSUE 2**

The issue of whether appellant has established continuing disability following termination is a medical one, based on the medical evidence of record.<sup>14</sup> Appellant did not submit any additional medical evidence following the July 27, 2015 termination decision, other than the December 1, 2015 report from Dr. Hriso. This report pertains to a claimed psychiatric condition. OWCP, however, has not accepted a psychiatric condition causally related to the July 19, 2001 employment injury. Appellant has not provided a probative medical opinion to support that she was disabled or currently required medical treatment due to her employment-related lumbar radiculitis. The Board therefore finds that appellant has failed to meet her burden of proof to establish continuing disability after July 27, 2015.

### **LEGAL PRECEDENT -- ISSUE 3**

An employee seeking benefits under FECA<sup>15</sup> has the burden of proof to establish that the essential elements of his or her claim including the fact that the individual is an "employee of the

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<sup>10</sup> *Id.*

<sup>11</sup> *Supra* note 7.

<sup>12</sup> *See Paul Foster*, 56 ECAB 208 (2004); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>13</sup> *See J.A.*, Docket No. 15-0908 (issued August 6, 2015).

<sup>14</sup> *Supra* note 12.

<sup>15</sup> *Supra* note 2.

United States” within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>16</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>17</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>18</sup>

Appellant has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence, a causal relationship between his claimed bilateral carpal tunnel condition and his federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>19</sup>

### **ANALYSIS -- ISSUE 3**

The Board finds that appellant failed to submit sufficient medical evidence to establish that her claimed psychiatric condition was causally related to the July 19, 2001 injury. For this reason, appellant did not discharge her burden of proof.

With regard to her claimed psychiatric condition, Dr. Hriso submitted reports dated September 23, 2006 and December 1, 2015. In these reports he noted that he had been treating appellant for depression, anxiety and insomnia since February 2003 and he opined that these conditions were aggravated by employment factors. Dr. Hriso related complaints of depressed

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<sup>16</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>17</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>18</sup> *Id.*

<sup>19</sup> *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).



mood, tearfulness, anxiety, panic attacks, feeling of worthlessness, poor self-esteem, insomnia, and musculoskeletal pain involving her lower back and knees, which made it difficult for her to walk. He diagnosed major depression secondary to her disabled state, which stemmed from her multiple work-related injuries. Dr. Hriso noted that appellant was not able to adjust to her disabled state after being productive as a nurse for so many years, which damaged her self-esteem and aggravated her depressed condition. He related that she had a history of work-related injuries which adversely affected her daily functioning and caused chronic pain, with resulting depression and anxiety. Dr. Hriso opined that her psychiatric conditions of chronic panic disorder, anxiety disorder, and dysthymic disorder were directly related to her work injuries.

The reports of Dr. Hriso are of limited probative value as he did not provide adequate medical rationale as to why appellant's psychiatric condition was causally related to the July 19, 2001 employment injury.<sup>20</sup> The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested, and the medical rationale expressed in support of stated conclusions.<sup>21</sup> Dr. Hriso's reports described his treatment of appellant for a major depressive disorder, panic disorder, anxiety disorder, and dysthymic disorder. He prescribed antidepressant medications, anxiolytics, and supportive psychotherapy to ameliorate these conditions. Dr. Hriso, however, did not sufficiently describe how the July 19, 2001 injury caused or aggravated the claimed conditions. His opinion on causation is of limited probative value for the further reason that it is generalized in nature and equivocal. Dr. Hriso did not provide adequate medical evidence to establish that appellant's claimed psychiatric condition was causally related to the July 19, 2001 employment injury.

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated, or aggravated by her employment is sufficient to establish causal relationship.<sup>22</sup> Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

OWCP advised appellant of the evidence required to establish her claim. However, appellant failed to submit such evidence. Consequently, the Board finds that she has not met her burden of proof to establish additional conditions causally related to her accepted work injury.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

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<sup>20</sup> *William C. Thomas*, 45 ECAB 591 (1994).

<sup>21</sup> *See Anna C. Leanza*, 48 ECAB 115 (1996).

<sup>22</sup> *Id.*

### **CONCLUSION**

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits as of August 23, 2015. The Board finds that she has not established continuing disability due to of her accepted lumbar radiculitis condition following the termination of compensation benefits on August 23, 2015. The Board finds that appellant has failed to meet her burden of proof to establish that her claimed psychiatric condition was causally related to the July 19, 2001 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the February 2, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 23, 2017  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board